

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

PASQUALE CISTERNINO,)	CASE NO. 1:05 CV 2490
)	
Petitioner,)	JUDGE CHRISTOPHER A. BOYKO
)	
v.)	
)	
ADULT PAROLE AUTHORITY,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Respondent.)	

On October 21, 2005, petitioner pro se Pasquale Cisternino filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Cisternino is currently confined in an Ohio penal institution. As grounds for the petition, he alleges that he was not given appropriate jail time credit, under Ohio law, for a period of time he was held pending a parole violation hearing, and that this violates his right to due process. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. In addition, petitioner must have exhausted all available

state remedies. 28 U.S.C. § 2254.

Even assuming that Cisternino raises a federal constitutional issue which is cognizable in habeas corpus, there is no indication that this issue was exhausted in the Ohio courts. Instead, the petition reflects only that he filed a motion in the trial court, which was denied. There is no suggestion that he appealed the denial, or raised the issue via some other vehicle in the Ohio Supreme Court.

Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the petition is denied and this case is dismissed without prejudice. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

/s/ Christopher A. Boyko

CHRISTOPHER A. BOYKO

UNITED STATES DISTRICT JUDGE

DATE: December 15, 2005